

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MELVIN MARCUS JOHNSON, JR.,

Petitioner,

v.

JASON BENNETT, et al.,

Respondents.

CASE NO. C23-5188 BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

This matter comes before the Court on Magistrate Judge Brian A. Tsuchida's Report and Recommendation ("R&R") recommending the Court deny Petitioner Melvin Marcus Johnson, Jr.'s 28 U.S.C. § 2241 Petition for Writ of Habeas Corpus, Dkt. 1, because he seeks relief available under only 28 U.S.C. § 2255 and a § 2255 petition would now be time-barred. Dkt. 4. The Court agrees with the R&R that Johnson's petition is improperly filed under § 2241.

The district court should grant an application for a Certificate of Appealability only if the petitioner makes a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To obtain a Certificate of Appealability under 28 U.S.C. § 2253(c), a habeas petitioner must make a showing that reasonable jurists could debate whether, or agree that, "the petition should have been resolved in a different manner or

1 that the issues presented were adequate to deserve encouragement to proceed further.”

2 *Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000) (internal quotation marks omitted).

3 When the court denies a claim on procedural grounds, the petitioner must show that

4 “jurists of reason would find it debatable whether the petition states a valid claim of the

5 denial of a constitutional right and that jurists of reason would find it debatable whether

6 the district court was correct in its procedural ruling.” *Id.* at 484.

7 Judge Tsuchida recommends the Court dismiss Johnson’s petition because it was

8 improperly filed as a § 2241 petition rather than a § 2255 petition. The Court is adopting

9 that recommendation and the case is therefore being dismissed on procedural grounds.

10 No reasonable jurist could conclude the Court is incorrect in its procedural ruling. Thus, a

11 Certificate of Appealability is not warranted in this case.

12 The Court, having considered the R&R and the remaining record, and no

13 objections having been filed, does hereby order as follows:

14 (1) The R&R is **ADOPTED**;

15 (2) Petitioner’s 28 U.S.C. § 2241 Petition for Writ of Habeas Corpus, Dkt. 1, is
16 **DISMISSED with prejudice**;

17 (3) Johnson is denied a Certificate of Appealability; and

18 (4) The Clerk is directed to send copies of this Order to the parties and to Judge
19 Tsuchida.

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1 Dated this 4th day of April, 2023.

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4 BENJAMIN H. SETTLE
5 United States District Judge
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